IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 494

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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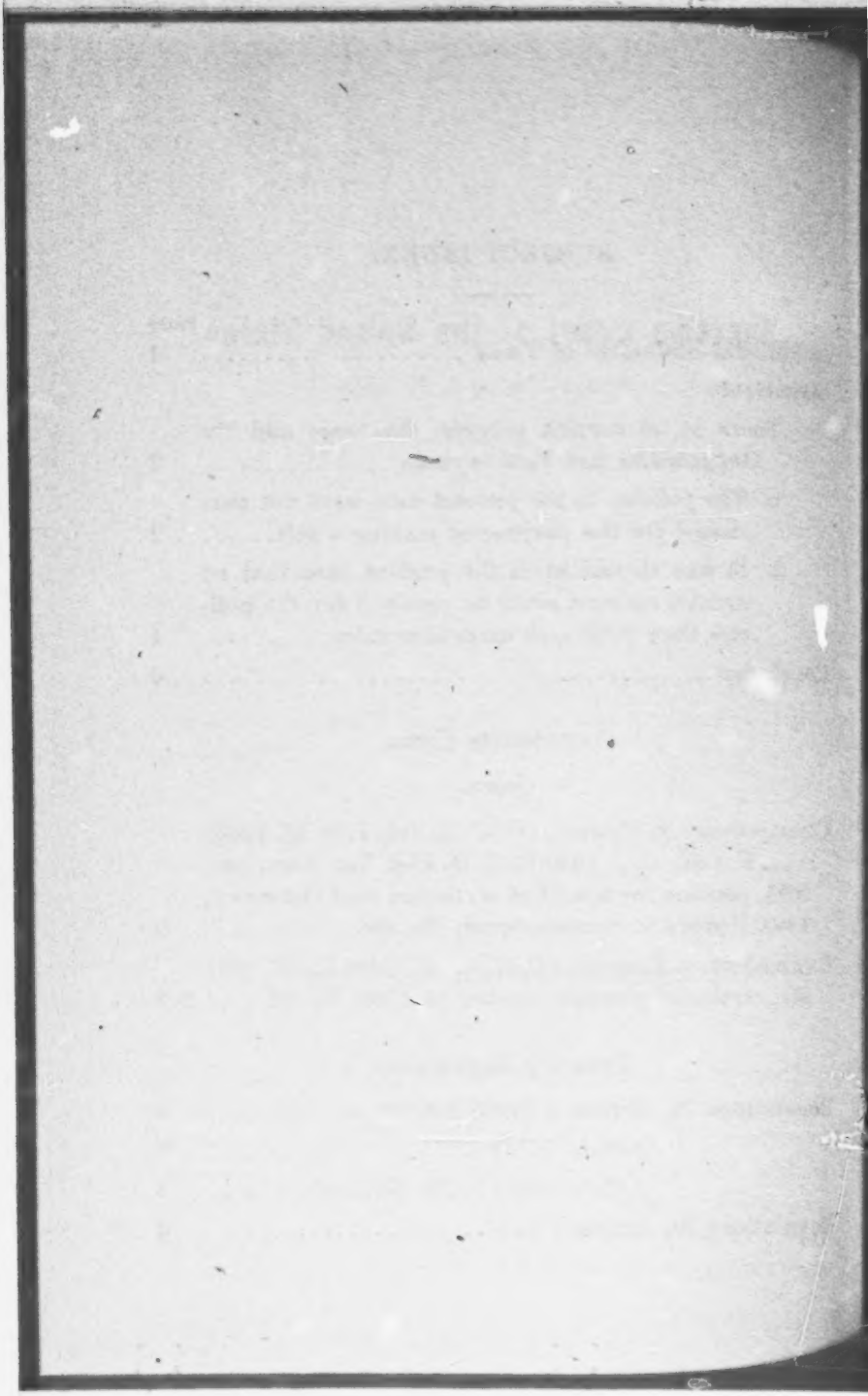
SUBJECT INDEX.

AUTHORITIES CITED.

Cases.

Treasury Regulations.



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ADDITIONAL STATEMENT OF FACTS.

There is one omission in the statement of facts in the Government's petition which respondents believe to be important. The parties stipulated (R. 38, 39), and the District Court found as a fact (R. 72), that no greater amount could have been obtained or realized on the insurance policies in question by surrendering them or borrowing on them, or otherwise, than their cash surrender values.

Argument.

Respondents submit that the Government has not shown a sufficient reason for granting its petition for certiorari. There are two essential differences of fact between the case at bar and those with which it is claimed be in conflict:[1]

1.

The first of the factual differences is conceded in the Government's petition (p. 5). In the case at bar, the insurance policies were taken out more than six years before they were assigned. There was no connection between the purchase and the gift. In the *Guggenheim* case, the policies were assigned immediately after they were issued, and in the *Powers* case they were assigned within thirty-five days after issuance.

Although, as the Government pointed out in its petition (p. 5), this distinction was not mentioned by the court below, it is inherent in the facts. It was pointed out in respondents' reply brief before the Circuit Court, and the omission of that court to mention the *Guggenheim* case may fairly be taken to indicate that it did not consider its decision to be in conflict with that case. This is supported by the manner in which the question at bar was disposed of. The decisions in this and the other cases upon the question rely, to a considerable extent, upon the Treasury Regulations in force at the time of the gifts under consideration. These regulations provided that the assignment of a life insurance policy "constitutes

1. *Guggenheim* v. *Rasquin*, (C. C. A. 2d, 1940) 110 F. (2d) 871, certiorari granted October 14, 1940, No. 92; *Commissioner* v. *Powers*, (C. C. A. 1st, July 16, 1940) .... F. (2d)...., 1940 C. C. H. Fed. Tax Serv. par. 9591, petition for a writ of certiorari filed October 7, 1940, *Powers* v. *Commissioner*, No. 486.

a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift."[2] The court below held that this regulation was valid. In the *Guggenheim* case, the court thought that this provision was not intended to apply to a case of simultaneous purchase and gift. The opinion states (110 F. (2d) 371, 373):

> "The regulation was evidently designed for a case where a policy was given away some time after issuance. We do not interpret it as intended for a case where a single premium policy is given away simultaneously with issuance."

It thus appears that the *Guggenheim* case was the exception to, and the case at bar within, the general rule. It is therefore natural that the distinction should be pointed out in the former, and not in the latter. There is no reason for disturbing the decision of the court below that the Treasury Regulations were valid as applied to a typical case falling within their purview.

The situation in the present case differs widely from that in the *Guggenheim* and *Powers* cases. As the Circuit Court of Appeals in the *Guggenheim* case (110 F. (2d) 371, 373) pointed out, if a parent pays $1,000 for an automobile to be delivered to his son as a gift, the value of the gift is $1,000, just as if the parent had given his son the money to make the purchase. And the same is true of insurance policies, or any other kind of property. If the property is purchased for the purpose of making a gift, and as a part of the same transaction, the amount of the gift is the cost of the property. It was so held in the *Guggenheim* and *Powers* cases.

On the other hand, if the parent in our illustration had purchased the automobile for his own purposes, and

2. Article 2, Regulations 79, 1933 Edition, quoted in the appendix to the Government's petition, at p. 7. In the 1936 edition of the regulations, this provision was removed, and another substituted which adopted the cost of a comparable policy as the measure of value. Article 19(9), quoted at p. 10 of the petition.

several years later gave it to his son, the value of the gift would be what the car would bring on the market; and if the only available purchaser was a dealer, the value of the gift would be the price that could be obtained from that dealer. It would not be the amount which the parent would have to pay the dealer for a similar automobile, an amount which would normally include the dealer's cost of doing business and his profit on the transaction. The expenses of sale cannot fairly be considered in determining the value of a gift unless the property was purchased for the purpose of making the gift, in which case the expenses would have been incurred for the benefit of the donee. As the Circuit Court of Appeals, quoting the Board of Tax Appeals, said in this case,[3]

> " 'The fact that insurance companies assume risks and make a charge for doing so which reduces the salable value of the contract from the moment of its issue is of no importance. The true test of value is what such contracts can be sold for, not what it will cost to turn around and buy another one from the insurance company which chooses to make a service charge for issuing another.' "

The difference between the two situations is fundamental. When the purchase and gift are unconnected, the value of the property given is the amount of money which the donor could receive for it, and the court below so held.

2.

The second difference of fact between the case at bar and the *Guggenheim* and *Powers* cases lies in the stipulation and finding of fact referred to above (p. 1). In the present case it was stipulated that no greater amount could have been received upon the insurance policies in question than their cash surrender value *in any way*, from the insurance company or otherwise. This is strong evidence

3. R. 93. The opinion is now reported at 114 F. (2d) 150. The quotation appears on page 153.

of fair market value. Fair market value is generally accepted as the standard of statutory "value", and is adopted as such by the Treasury Regulations under both the Gift Tax and Estate Tax laws.[4] There is no evidence in the record of the present case upon which any other market value could be predicated. In the words of the court below (R. 93, 114 F. (2d) 150, 153),

> "The parties stipulated that 'no greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values.' The District Court found the foregoing to be a fact. If 'fair market price' has any significance for the present question it would seem that the cash surrender value more nearly conforms to the fair market value test than does the cost of duplication."

There is no reason why insurance policies should be valued differently from other kinds of property. A paid-up insurance policy is in substance a right to receive a certain sum of money at the death of a person of a given age. The insured in this case was 79 years old when the policies were assigned (petition, p. 2). The Treasury Department has adopted rules for the computation of the present value of such a right for gift tax purposes. Article 19, Regulations 79, Table A, gives the present value of the right to receive $1 at the death of a person 79 years of age as $0.81159. On this basis, the present value, on the date of the gift, of the right to receive the face amount of the policies in question ($200,000, petition, p. 2) is $162,318. The decision of the court below fixes this value at $161,965.

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4. Article 19(1), Regulations 79, quoted in the Government's petition at pages 8-10. To the quotation from the 1933 edition should be added the following:

> "Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects *the fair market value* thereof as of the date of the gift, the selling price will be accepted as the amount of the gift." (Italics supplied.)

Similarly, the Estate Tax Regulations (Article 10(a), Regulations 80) provide:

> "The value of every item of property includible in the gross estate is the fair market value thereof at the time of the decedent's death."

The smallness of the difference between the two figures ($353) demonstrates the soundness of the method of valuation adopted by the Circuit Court. The opinion below said (R. 93-4, 114 F. (2d) 150, 153):

> "Making due allowances for costs of administration which are properly allocable to an insurance policy, the cash surrender value at any particular time is approximately the present worth of the face of the policy as of the 'expectancy' date of the death of the insured. * * * in computing values of contracts of insurance we cannot ignore the basic data upon which all such contracts are predicated and which enter into all determinations of values which are fixed by the contract."

Conclusion.

It is respectfully submitted that the Government's petition for a writ of certiorari in this case should be denied, because there is no adequate showing of a conflict between the decision below and the decisions of other Circuit Courts of Appeals on the valuation question, and because no other reason appears for disturbing the decision of the court below on this question.

Respectfully submitted,

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